

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Application of
Charles S. Drenth for a Real Estate
Salesperson's License

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis at the Office of Administrative Hearings in St. Paul on November 21, 2011. The hearing record closed at the conclusion of the proceeding on the same day.

Appearances: Michael J. Tostengard, Assistant Attorney General, on behalf of the Minnesota Department of Commerce (Department, DOC); Charles S. Drenth (Applicant), appeared on his own behalf, without counsel.

STATEMENT OF ISSUES

1. Is it appropriate to deny a real estate salesperson's license to Charles S. Drenth because of his conviction in April, 2007, for felony theft of over \$2,500.00?
2. Is it appropriate to deny Mr. Drenth's application because of a judgment against him, docketed in November 2009, in the amount of \$2,630.00?
3. Is it appropriate to deny the license application of Mr. Drenth because of acts and practices that demonstrate that he is untrustworthy, financially irresponsible and unqualified to act under the authority of a license granted by the Commissioner, in violation of Minn. Stat. §§ 45.027, subd. 7 and 82.82, subd. 1?

The Administrative Law Judge concludes it is appropriate to deny the application of Charles S. Drenth for licensure as a real estate salesperson.

Based on the evidence and the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 15, 2011, the Applicant, age 32, submitted an application for licensure as a real estate salesperson, in which he answered "Yes" to the following question:

“Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?”¹

2. The Applicant did not provide a copy of the criminal complaint or sentencing order relating to the crime for which he was convicted. The application specifies that an applicant who answers “Yes” to the question above at Finding 1 must submit a certified copy of the charging document, a certified copy of documents demonstrating the resolution of any charges or any final judgment, and a written statement explaining the circumstances of each incident.²

3. On September 6, 2011, at the Department’s request, Mr. Drenth submitted the additional documentation noted in the preceding Findings.³

4. In November 2006, the Applicant was charged with felony theft for taking several pieces of computer and camera-type merchandise from his employer and selling them on E-Bay, between July and September of 2006. Mr. Drenth admitted to his employer that the E-Bay account was his and that he used it to sell various items he had stolen from his employer, the value of which items was in excess of \$2,500.00.⁴

5. In April 2007, Mr. Drenth entered a plea of guilty to the charge of felony theft of over \$2,500.00. The sentencing Court stayed imposition of the sentence for a period of three years, and placed Mr. Drenth on probation, fined him \$275.00, and required him to pay restitution in the amount of \$8,297.99.⁵

6. Court records reflect one judgment against Mr. Drenth, in the amount of \$2,630.00, docketed in November 2009. That judgment is still active.⁶

7. In September of 2011, the DOC informed Mr. Drenth that his application for licensure was denied based on the nature of his criminal charge and conviction. Mr. Drenth filed a timely appeal, and this hearing process followed. At the hearing, Mr. Drenth stated that he has paid his debt to society and has remained free of any criminal activity since 2006.⁷

8. Mr. Drenth does not contest that he has an outstanding judgment from November, 2009, in the amount of \$2,630.00.⁸

¹ Exhibit 1.

² *Id.*

³ Testimony of Cheryl Costello.

⁴ Exhibit 2.

⁵ Exhibit 4; Testimony of Costello and Charles Drenth.

⁶ Exhibit 3; Testimony of Drenth.

⁷ Testimony of Drenth.

⁸ *Id.*

9. Mr. Drenth was discharged from probation for his felony theft conviction on May 13, 2010, effective April 25, 2010.⁹

10. Mr. Drenth submitted three letters of support from persons who are familiar with him. One letter, from a retired psychiatric therapist, notes that while Mr. Drenth has had difficulty in the past, “there has been an amazing transformation from ‘boy’ to ‘man’ in him.” The retired therapist did not treat Mr. Drenth as a patient. Another letter notes that Mr. Drenth is an individual who displays “a degree of ambition and desire to be productive”. That person interviewed Mr. Drenth for possible employment. That writer has known Mr. Drenth for more than 20 years and notes that he works hard to be redeemed as a responsible individual and parent. The third letter supporting Mr. Drenth notes that Mr. Drenth is a person of strong character and possesses a strong work ethic. That person also has known Mr. Drenth for over 20 years and is acquainted with him through participation in community volunteer projects.¹⁰

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, subd. 7(b), and 82.82, subd. 5.

2. The Notice of Hearing was proper and the DOC complied with all procedural requirements. Under Minn. Stat. § 82.82, subd. 1, the Commissioner may deny a license application if the denial is in the public interest, and if the applicant has engaged in a fraudulent, deceptive or dishonest practice, or has demonstrated in the conduct of his affairs that he is incompetent, untrustworthy, or financially irresponsible.¹¹

3. A denial of the application by Charles S. Drenth for licensure as a real estate salesperson is in the public interest within the meaning of Minn. Stat. §§ 45.027, subd. 7 and 82.82, subd. 1(1).

4. The Applicant has failed to show by a preponderance of the evidence that he does not have any outstanding judgments, and that he is financially responsible within the meaning of Minn. Stat. § 82.82, subd. 1(f). He has not established sufficient competent evidence showing rehabilitation and present fitness for licensure as a real estate salesperson.

5. It is appropriate to deny Mr. Drenth’s application for real estate salesperson licensure at this time.

⁹ Exhibit 4.

¹⁰ Exhibits 5, 6, and 7.

¹¹ Minn. Stat. § 82.82, subd. 1(a), subd. 1(b) and subd. 1(f).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the application of Charles S. Drenth for a real estate salesperson's license be **DENIED**.

Dated: December 2nd, 2011

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Recorded Digitally

NOTICE

This report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler, Suite 500, 85 Seventh Pl E, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a.

Under Minn. Stat. § 14.62, subd. 1, the agency/board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Applicant has failed to demonstrate that he is qualified for licensure as a real estate salesperson. The Applicant has committed a crime that relates directly to the professional practice for which he seeks licensure. The theft of property at a level high enough for Mr. Drenth to have been convicted of a felony implies strongly that he is untrustworthy and financially irresponsible, even if he has served his probation satisfactorily. Taken as a whole, Mr. Drenth's evidence falls short of establishing he has rehabilitated himself sufficiently to be fit at this time for the licensure he seeks.

Real estate salespersons routinely are entrusted with the possession (particularly earnest money placed in escrow) of client funds. They also routinely receive payment intended for the purchase of real estate, and are entrusted with transferring such monies appropriately.

Mr. Drenth has not demonstrated that he no longer is financially irresponsible. His financial irresponsibility continues, demonstrated by his failure to satisfy a relatively small judgment that has been entered against him for approximately two years.

The written testimonials to Mr. Drenth's character and work ethic are persuasive and impressive, but the absence of the persons' making the written declarations deprives the record of testing their statements under cross examination, their writings are discounted appropriately as a matter of evidentiary law.

On the whole, Mr. Drenth's evidence is insufficient to overcome the strong presumption presented by his conviction for felony theft and by the outstanding judgment against him that he remains financially irresponsible. For that reason, it is appropriate to deny Mr. Drenth's application at this time for licensure as a real estate salesperson, which is a profession whose practitioners engage in handling large sums of money and have fiduciary responsibilities respecting such funds.

R. C. L.